

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PATRICK ANDREW HEBERT

PLAINTIFF

VS.

CIVIL ACTION NO. 3:10cv219-DPJ-FKB

COMMISSIONER CHRISTOPHER EPPS, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

This is an action brought pursuant to 42 U.S.C. § 1983 by Patrick Andrew Hebert, a state inmate housed at Central Mississippi Correctional Facility (CMCF). Defendants include Mississippi Department of Corrections (MDOC) officials and MDOC medical services providers. Plaintiff, who suffers from Crohn's disease, alleges that Defendants have failed to provide adequate medical treatment and dietary provisions for him.

Presently before the court is the motion of Defendant Wexford Health Sources [22] to dismiss for failure to exhaust administrative remedies.¹ Plaintiff has not responded to the motion. Having considered the motion, the undersigned recommends that the motion be granted.

The applicable section of the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997(e), requires that an inmate bringing a civil rights action in federal court first exhaust his administrative remedies. *Whitley v. Hunt*, 158 F.3d 882 (5th Cir. 1998). This exhaustion requirement “applies to all inmate suits about prison life.” *Porter v. Nussle*,

¹This defendant was erroneously designated in the complaint as “Wexford Health Services.” Previously, this defendant moved for dismissal [20] on the basis that the named defendant is not a proper party and that the proper party has not be served with process. Dismissal of the entire complaint will render moot the former motion to dismiss.

534 U.S. 516, 122 S. Ct. 983, 992 (2002). Plaintiff states in his complaint that he has not completed MDOC's Administrative Remedy Program regarding his claims. For this reason, the undersigned recommends that the motion be granted and the complaint dismissed without prejudice.

Also pending is the motion of Wexford Health Sources seeking dismissal for Plaintiff's failure to properly serve it with process [20]. The undersigned recommends that this motion be dismissed as moot.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. § 636; Fed. R. Civ. P. 72(b); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Respectfully submitted, this the 13th day of May, 2011.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE